S.B. CIVIL WRIT PETITION NO.6570/2006

Munni Devi and anr.
vs.
Civil Judge (JD), Pali and ors.

Date : 3.12.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.JK Bhaiya a/w Mr.DR Kawadia, for petitioners.
Mr.HR Soni, Dy.GA, for the respondents.

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Heard learned counsel for the parties.

The grievance of the petitioners is that the court below committed serious error of law in reframing the issues when the case was fixed for final judgment.

It is submitted that when original issue, as framed by the court below on 5.1.2006, is clear and ambiguous and which clearly makes the parties aware that the plaintiff has challenged the communication dated 19.3.2003 as wrong as well as null and void and issue has been framed to the effect that whether the defendants' letter dated 19.3.2003 is wrong and the plaintiff is entitled to get it declared null and void against the

interest of the plaintiff.

The trial court on 16.10.2006 framed the issue no.3A to the effect that whether the order dated 19.3.2003 is wrong and illegal ? When the plaintiff moved application under Order 14 Rule 5 CPC, the trial court vide order dated 4.11.2006 again reframed the issue no.3A which was framed on 16.10.2006 as whether the order dated 19.3.2003 cancelling the lease renewal of the plaintiff is null and void and ineffective ?

According to learned counsel for the petitioners, the issue was already framed by the Court below on 5.1.2006 covered the entire controversy and parties led their evidence by knowing the case of each other.

Learned counsel for the respondents vehemently submitted that the effect of the issue is the same and if the plaintiffs are satisfied, then the original issues be adjudicated by the court below.

It appears that on 5.1.2006 while framing the issue, the communication dated 19.3.2003 was described as letter of the defendants, whereas in the issue framed on 16.10.2006, that communication dated 19.3.2003 was described as order of the

defendants and in the impugned order dated 4.11.2006, issue no.3A framed is to the effect whether the order dated 19.3.2003 cancelling the lease renewal is null and void ? In fact, there is change of word from letter to order in the issues, rest everything was very clear and the case was understood well by the parties and the evidence was accordingly led.

In view of the above, I do not find that there was any reason for the court below to amend the issue dated 5.1.2006 and that too at the time of decision of the case.

In view of the above reasons, this writ petition is allowed, the order dated 4.11.2006 is set aside and since the Court can frame issue at any stage, it is ordered that the original issue framed on 5.1.2006 shall be adjudicated by the trial court and not the issue frame on 4.11.2006 which only makes change in the language and the fact whether the communication dated 19.3.2003 is order or letter, it only purports to act against the interest of the plaintiffs and that has been challenged by the plaintiffs.

Learned counsel for the respondents at this stage also submitted that by deletion of the issue

which was framed by the court below subsequently and reaffirming the earlier issue, the respondents may have right to raise objection that proper issue was not framed.

This argument of the learned counsel for the respondents is devoid of any force in view of the fact that this Court already held that the issue which was framed on 5.1.2006 is the proper issue and the communication dated 19.3.2003 is challenged by the plaintiffs and this controversy is not in dispute and the plaintiffs have challenged the communication dated 19.3.2003 on the ground that this communication is adverse to them.

(PRAKASH TATIA), J.

S.Phophaliya